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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date and Time:
July 12, 2023 at 10:00 a.m.

-----X
In re

Chapter 11

ERBO PROPERTIES, LLC, et al.,

Debtors.

Case No. 23-10210 (LGB)
(Jointly Administered)

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**DECLARATION OF FRANK M. GRACZYK IN SUPPORT OF OBJECTION TO
APPLICATION OF THE DEBTORS SEEKING TO EXTEND THE DEADLINES SET
FORTH IN THE COURT'S JUNE 28, 2023 SCHEDULING ORDER**

Under 28 U.S.C § 1746, I, Frank M. Graczyk declare under penalty of perjury:

1. I am a Principal of Project Control Associates, Inc. ("PCA"), a construction consulting firm that specializes in providing commercial and construction real estate lenders with technical due diligence services. PCA has been engaged by G4 18190, LLC ("G4") since on or about January 4, 2019 to provide construction monitoring and related advisory services in conjunction with their financing of the improvements being made to the property located at 541 West 21st Street, New York, NY (the "Property").

2. On or about July 7, 2023, PCA was asked to review and opine on the Debtors' recent proposal to convert the Property into a migrant shelter in connection with the above captioned proceedings. As such, I am fully familiar with all of the facts and circumstances set forth therein.

3. I submit this declaration in support of G4's Objection to the Application of the Debtors Seeking to Extend the Deadlines Set Forth in the Court's June 28, 2023 Scheduling Order.

4. Attached hereto as Exhibit A is a true and correct copy of a memo I authored that comments on the Debtors' proposal and further summarizes the requirements that would be necessary to complete the proposed conversion of the Property.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: Morristown, New Jersey
July 11, 2023

By: /s/ Frank M. Graczyk
Frank M. Graczyk

EXHIBIT A

Project Control Associates, Inc

Memo

To: Stephen Selbst, Herrick Feinstein, LLP
From: Frank Graczyk, Vitold Gromek, PCA
cc: G4 18190, LLC (G4)
Date: 7/10/23
Re: 541 West 21st, NY, NY

Background

Project Control Associates, Inc. (PCA) is a construction consulting firm established in 1997 with an office located in Morristown, New Jersey. PCA specializes in providing commercial and construction real estate lenders with technical due diligence services by its team of licensed code inspectors, engineers, and architects. PCA's client list includes some of the largest CRE lenders in the country as well as smaller specialized lenders such as G4. PCA's portfolio of work extends from New York to Virginia.

Frank Graczyk is a Principal of the firm with over 30 yrs of financial and construction industry experience. Mr. Graczyk hold a BS in Mechanical Engineering, a MS in Civil/Environmental Engineering, and a Master of Business Administration (MBA). Mr. Graczyk has received formal CRE underwriter training from the American Institute of Banking and holds construction code licenses as a Building Code Inspector, Mechanical Code Inspector and Fire Prevention Code Inspector. Vitold Gromek is a Senior Associate with the firm with over 40 yrs of design and construction inspection experience. Mr. Gromek holds a BS in Architecture (Cornell University) and a Master of Business Administration (MBA) from NYU. Mr. Gromek is a NY Registered Architect (RA) whose work experience includes being a Plan Examiner with the NYC Dept of Buildings (NYC DOB).

Project Control Associates, Inc (PCA) was engaged by G4 18190, LLC (G4) to provide construction monitoring and related advisory services in conjunction with their construction financing of the improvements made to the above captioned property. Our services commenced on or about January 4, 2019. PCA last observed the subject premises on March 22, 2023.

541 West 21st, NY, NY

Initial Project Scope.

The 0.17 acre site is located at 541-545 West 21st Street, in the West Chelsea neighborhood of New York, New York and is comprised of a rectangular-shaped parcel identified as Block 693, Lot 10 on the New York City Department of Finance (DOF) Tax Map. The site is in an A/E flood hazard area per FEMA.

The project as originally planned entailed the alternation of the existing circa 1915 eight (8) story, ~57,000 sqft plus cellar, warehouse building into a “core and shell” office building with ground floor retail. The building footprint encompasses essentially the entire site. The work included select structural, façade, interior, and loading dock demolition, ground floor floodproofing measures, partial first floor slab reconstruction with new interior entry stairs, new “base-building” M/E/P systems, exterior improvements with masonry façade repairs, new windows, new precast concrete front façade and street-level storefront, two new elevators serving 1st to roof levels, a partial rooftop addition, new roofing, and reconfiguration of the building core (lobbies, bathrooms) and circulation, all in support of the intended future office and retail uses.

Certain demolition work started around August of 2019 with an expected substantial completion of the entire project in October 2020. Work pace was affected by many issues during construction including the inability of the Owner to properly manage the project. Project budgets and schedules required several revisions during the course of construction due to delays and cost overruns. After almost 4 yrs, the project has not received a Temporary Certificate of Occupancy, or approval of LL11 façade work, from NYC DOB. At PCA’s last site visit earlier in 2023, PCA observed that while the project as planned was nearing completion, the building’s MEP/FA systems had not yet been commissioned and typical startup and troubleshooting remained. The so-called Builders Pavement Plan (BPP) work, entry floodproofing, and entry canopy were incomplete. Final “TR” certifications and DOB sign offs remained, and only partial electrical power had been established. The fire sprinkler system was reportedly operational however annual recertification of the system was last reported as pending. The roof water tower was only partially filled. The lobby was not complete.

Revised Project Scope

PCA has been provided with the Letter of Intent lease documents that outline the conversion of the above noted “core and shell” office building into a “migrant shelter” residential use consisting of “330 bed and 180 residential Units Adult and Family Shelter”. A short summary statement of “Build Out Requirements” further attempts to explain the proposed alternations. However, significant aspects of the proposed work remain wholly undefined. No architectural or engineering plans and specifications have been submitted, nor have any professional services agreements to prepare such documentation.

541 West 21st, NY, NY

We also note the following:

Based on on-line review of the NYC Build Now database, no application related to the proposed work has been submitted to NYC DOB. The type of filing to be made to the NYC DOB for the project is unknown. We note that the Alteration filing for the original ‘core and shell’ project took over 8 months to be approved by NYC DOB; 3/26/2019 file date and 12/13/2019 approval date. Work cannot start until the DOB grants approval of filed plans and associated Work Permits are issued. For example, current NYC DOB Service Levels in Manhattan for Alteration CO applications are reported as ~20 days for the application review by DOB, 25 days for the applicant to resolve DOB objections and at least 2 submissions to obtain DOB Approval. (Link: [DOB Service Levels \(nyc.ov\)](https://www.nyc.gov/buildnow/service-levels))

Total Review Time and Resubmissions

	Citywide	Manhattan	Bronx	Brooklyn	Queens	Staten Island	
	New Building		Alteration		Alteration CO		All Job Types
Average Days Application is with Agency	26.15		9.07		19.90		9.29
Average Days Application is with Applicant	35.91		11.52		25.70		12.37
Average Resubmissions to Approval	2.21		1.00		2.13		1.05

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For approved applications this table shows the average number of days an application is with the DOB, the average number of days the DOB is awaiting a response from the applicant, and the average number of resubmissions.

The planned “migrant shelter” residential use has considerable NYC construction code and Multiple Dwelling Law (MDL) requirements (light/air/security/ventilation/life safety) to satisfy, and it is not anticipated that an application to the NYC DOB would be approved quickly or with its initial submission. Without complete architectural and/or engineering plans, zoning, energy, egress, life safety, and accessibility code conformance, and required alternations to existing building systems, remain wholly undefined to PCA.

The “Build Out Requirements” do not provide sufficient detail to obtain the tenant’s preconstruction approval of, or implementation and completion of the proposed work.

541 West 21st, NY, NY

The adjoining property at 551 West 21st is a high-end residential condominium, the owners of which previously placed significant obligations on the owner of 541 West 21st to obtain a required access license. The planned project entails a change in use. The statutory “zoning challenge period” of 45 days along with the 15-day appeal period have not begun; collectively 60 days. A Zoning Challenge can easily be made on-line thru the DOB NOW Public Portal. Objections emanating from 551 West 21st seem likely.

The Letter of Intent lease documents do not disclose if residential occupancy is to be transient (shorter than 30 days) or non-transient. We also note that the residential use poses unique risks with respect to occupant eviction at the end of the tenant lease period.

The site is in an A/E flood hazard area per FEMA. We do not see any disclosure or acknowledgement of this in the Letter of Intent lease documents. The “Build Out” includes work at the cellar level below the so-called Base Flood Elevation (BFE) including a laundry room with 8 washers and 8 dryers, and resident storage room. NYC Code requirements remain to be satisfied.

The existing elevator does not extend to the cellar level where the laundry room and resident storage room are to be located. It is not known if the laundry room is to be for resident use; accessibility requirements may apply.

Excluding the elevator and stair shafts, and mechanical room, the 8th floor is ~6,700 sqft. The “Build Out Requirements” for the 8th floor seemingly exceed the available floor area.

The planned Build Out requires completion of certain remaining work, revisions to the existing life safety, mechanical, electrical, and plumbing systems, and new work. This will entail formal bidding, engaging a Contractor and procurement of materials and equipment, some of which have very long lead times in the current marketplace. We note in the past the owner has stated “*We’ve been shut down for +2 months and it will take considerable effort to resume our progress onsite*”. (Email dated September 13, 2022 from Peter Cecora to G4). Once complete, the work will require inspections by both NYC DOB and NYC FDNY, along with other 3rd party certifications per NYC Code requirements. Currently there are long wait times for FDNY inspections. For the “Build Out Requirements”, we would expect the bid, contract, procurement, construction, and inspection process to take at least 6 months once required DOB preconstruction approval is obtained. Once work is completed, the TCO process would be expected to take several weeks.

END